Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78898558
LAW OFFICE ASSIGNED	LAW OFFICE 119
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/78898558/large
LITERAL ELEMENT	CAMPARI
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.

ARGUMENT(S)

The Office continues to assert that the evidence in the record shows use of CAMPARI® as a varietal name. Applicant disagrees. While the amount of "material" in the record is extensive, very little of that material constitutes "evidence", even less is authoritative, and none should be relied upon by the Office to support a suggestion that CAMPARI is a variety of tomato. Accordingly, Applicant again asks the Office to reconsider its position.

The TEMP recites the following at Section 1202.12:

...examiningattorney must also undertake an independent investigation of any evidence that would support a refusal to register, using sources of evidence that are appropriate for the particular goods specified in the application (e.g., laboratories and repositories of the United States Department of Agriculture, plant patent information from the USPTO, a variety name search of plants certified under the Plant Variety Protection Act listed at www.ars-grin.gov/npgs/searchgrin.html).

Based on this passage, evidence that might support a refusal to register consists of material from government sources, to wit: USDA laboratories and repositories, USPTO plant patent, and a variety name search of plants certified under the PVPA. But the record for the present application includes almost none of these types of evidence.

There are no CAMPARI Patents

The record does not mention a single relevant patent or PVPA certificate. Page 52 of the Office action was directed to patent and PVPA search results. No relevant records were identified by the search results.

The USDA Database Is Not Evidence

Pages 49 – 51 of the Office action were directed to data from the Agriculture Variety (Name) database maintained by the USDA, Agricultural Marketing Service (i.e., a potential repository of the USDA). But that particular database is NOT a source of evidence.

The Department of Agriculture webpage leading to the database includes the following disclaimer:

"Therefore, some of the names on the list may not be legal under the Federal Seed Act. <u>There may be errors or omissions</u>. <u>There may be names that were cleared for use but never used</u>." **See Exhibit A** (*emphasis added*).

The online instructions for the database also include the following express disclaimer:

"** Please note that even if you do see a variety name listed, it does not mean that the name has been released in the U.S. **"

See Exhibit A.

According to these express disclaimer, at best, the database relied upon by the Office at pages 49-51 consists of names that the USDA <u>may</u> have cleared for use. Indeed, the USDA even concedes that the database may include errors. The database, therefore, cannot be relied on (as the Office does here) to evidence that any particular name was ever actually used as a variety or cultivar name.

The limitations on the scope and reliability of the USDA database have also been verbally confirmed to Applicant's counsel by the Department official responsible for maintaining the database. In June 2015, Applicant's undersigned counsel spoke via telephone with Mr. Kevin Robinson, who serves as Seed Marketing Specialist, Seed Regulatory and Testing Division, with the Department of Agriculture. Mr. Robinson confirmed that the disclaimer on the website was accurate and the database cannot be relied upon as evidence that a particular name was actually used.

Therefore, in view of the above, it is clear that none of the "official" government sources relied upon by the Office support an argument that CAMPARI® is a variety of tomato in the USA.

The Other Materials In the Record Do Not Support the Office's Position

The other materials relied on by the Office are either unreliable or merely evidence Applicant's own CAMPARI® brand.

The printouts at pages 6 – 8 of the Office action mention Applicant by name and specifically reference Applicant's CAMPARI® brand. The printout on page 6 even bears the title "SUNSET® Signature **Campari® Brand Tomato** Salsa." The printouts on pages 7 and 8 are also Canadian in origin and so should not be relied upon to suggest that CAMPARI is a variety of tomato in the USA.

Regarding the recipes, the recipe on page 8 made one reference to CAMPARI. It stated in relevant part that "[t]here are five DIFFERENT types of tomatoes in this salsa. It includes the Roma tomato, Campari tomato, yellow tomato..." (*emphasis in original*). This blog is a non-professional blog, written by a member of the general public, who started blogging and cooking for therapeutic reason (see **Exhibit B**). As a result, this single informal reference to CAMPARI in no way supports the Office's position. It is and would be error for the Office to engage in pure speculation and assume otherwise. Indeed, a more likely presumption is that the author was describing Applicant's CAMPARI® brand tomatoes.

At page 9, another personal blog author suggested the use of "1 lb Campari Tomatoes" as part of the recipe. But here too, based on the informal style of writing, the nonprofessional nature of the blog, and a single reference to CAMPARI, the Office cannot and should not speculate – must less conclude – that the author is describing anything other than Applicant's own CAMPARI® brand tomatoes (which are mentioned at page 6 of the Office action) and/or rely on this simple recipe to label CAMPARI as a variety of tomato.

A newspaper article found at page 10 of the Office action is, like the printout at page 7, from a foreign source (i.e. Alberta, Canada) and should not be relied upon to suggest that CAMPARI is a variety of tomato in the USA. The article is also directed to Applicant and so it can and

should be reasonably concluded that the CAMPARI® tomatoes being discussed are Applicant's CAMPARI® brand tomatoes.

The Arizona newspaper article at page 16 of the Office action *supports* Applicant's position that CAMPARI is <u>not</u> a variety. The article stated in relevant part "...that's a Campari". The content and date of the article support a conclusion that the subject tomato could only have been Applicant's CAMPARI® **brand tomato**. Moreover, as mentioned above, this single reference to CAMPARI in a newspaper by an author of unknown qualifications lends absolutely no substantive support to the position taken by the Office. The Office cannot and should not engage in speculation by presuming otherwise.

The Office relied at pages 21, 22 and 25 – 35 on certain Wikipedia material, but did not provide any source citations for that material. Office policy is clear. "[T]he Board will consider evidence taken from Wikipedia so long as the non-offering party has an opportunity to rebut that evidence by submitting other evidence that may call into question the accuracy of the particular Wikipedia information. " *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1032-33 (TTAB 2007). In this case, the representations in the Wikipedia articles concerning CAMPARI are completely unsupported. The Office supplied no supporting or source papers for the Wikipedia materials. And, regarding contrary evidence, Applicant points to the Office's own materials, page 6 of the Office action, to support a claim that CAMPARI® is a brand of tomato, not a variety.

The website at pages 49 - 51 (Dave's Garden) is a "friendly global community" website that is no better (and likely worse) than Wikipedia in terms of probative value. The author(s) of the site are unknown, and of unknown background and training. The material provided in the Office action is also entirely unsourced and unsupported. Therefore, this reference cannot and should not be relied upon to support the position of the Office.

Pages 23 and 36 – 44, and specifically pages 23 and 40, refer to the same article based on research in New Zealand. Applicant, therefore, reiterates that material should not be relied upon to suggest that CAMPARI is a variety of tomato in the USA. Also, as with the Wikipedia articles, pages 23 and 40 of the Office action do not cite a single source to support the characterization of CAMPARI® as a variety of tomato. Therefore, as with the other materials, it can and should be concluded that the CAMPARI tomatoes being discussed are Applicant's CAMPARI® brand tomatoes.

At pages 13, 14 and 15, the Office cited a University of Florida paper in which the authors refer to seeds obtained from Netherlands based Enza Zaden. But this <u>single</u> alleged use of seeds, obtained from a Netherlands based company, simply should not be relied upon by the Office to conclude that CAMPARI is a variety of tomato in the USA. This single reference, in academia, is simply not enough to label something a variety.

Moreover, even if the Office were inclined to rely on the University of Florida paper, it is clear that the research discussed in the paper occurred well <u>after</u> Applicant's adoption of the CAMPARI® brand. Specifically, Applicant has used CAMPARI® as a brand since at least 1995. See e.g. U.S. Reg. No. 3037538. Therefore, even if the Office presumes that the University of Florida paper dates from 1998, that would still be years after Applicant first adopted the brand.

Finally, the printouts attached to the Office action of August 28, 2008 are identical to those attached to the outstanding Office action. The printouts attached to the Office action of January 2, 2008, none of which are from an authoritative government source, do not materially differ from the recipes and newspaper articles discussed supra so they can and should be dismissed as reliable evidence for the same reasons. Those materials also do not support the Office's position that CAMPARI is a variety of tomato.

To the extent there are questions of fact on whether CAMPARI is a variety, Applicant should

be given the benefit of the doubt.

In view of the above, Applicant request that the Examiner withdraw the refusal under Section 2(e)(1) and allow that case to once again proceed to publication.

2(e)(1) and allow that case to once again proceed to publication.		
EVIDENCE SECTION		
EVIDENCE FILE NAME(S)		
JPG FILE(S)	\\TICRS\EXPORT16\IMAGEOUT 16\788\985\78898558\xml8\\ RFR0005.JPG	
	\\TICRS\EXPORT16\IMAGEOUT16\788\985\78898558\xml8\RFR0006.JPG	
ORIGINAL PDF FILE	evi_50245102237-20150925154153612896MAS- 22419_08exhibit_B.pdf	
CONVERTED PDF FILE(S) (3 pages)	\\\TICRS\\EXPORT16\\IMAGEOUT16\\788\\985\\78898558\\xml8\\RFR0002.JPG	
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DESCRIPTION OF EVIDENCE FILE	Exhibit A: 2 pages - online instructions for the database Exhibit B: About Me Blog: healingtomato.com	
SIGNATURE SECTION		
RESPONSE SIGNATURE	/mds/	
SIGNATORY'S NAME	Mark D. Schneider	
SIGNATORY'S POSITION	Attorney for Applicant, Michigan bar member	
SIGNATORY'S PHONE NUMBER	248-647-6000	
DATE SIGNED	09/25/2015	
AUTHORIZED SIGNATORY	YES	
CONCURRENT APPEAL NOTICE FILED	YES	
FILING INFORMATION SECTION		
SUBMIT DATE	Fri Sep 25 16:35:50 EDT 2015	
TEAS STAMP	USPTO/RFR-50.245.102.237- 20150925163550942052-7889 8558-540a35843f2addac69e3 b26466a56b4f9e3638bcfe935 24ac3696a2f5d907f50-N/A-N /A-20150925154153612896	

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **78898558** CAMPARI(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/78898558/large) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

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EVIDENCE

Evidence in the nature of Exhibit A: 2 pages - online instructions for the database Exhibit B: About Me Blog: healingtomato.com has been attached.

JPG file(s):

Evidence-1

Evidence-2

Original PDF file:

evi_50245102237-20150925154153612896_._MAS-22419_08._exhibit_B.pdf

Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /mds/ Date: 09/25/2015 Signatory's Name: Mark D. Schneider

Signatory's Position: Attorney for Applicant, Michigan bar member

Signatory's Phone Number: 248-647-6000

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78898558

Internet Transmission Date: Fri Sep 25 16:35:50 EDT 2015 TEAS Stamp: USPTO/RFR-50.245.102.237-201509251635509

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N/A-N/A-20150925154153612896

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ABOUT ME

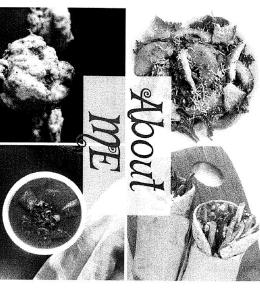
CONTACT

ABOUT ME

WORK WITH ME

HISTORY OF TOMATOES

PRIVACY POLICY



Welcome to my blog! Let me tell you a little about me.

My name is Rini and I started Healing Tomato in 2013. I started this blog because I needed a therapeutic way to deal with some of the traumatic incidents in my life. For me, cooking different recipes has always been

Today, this blog has become a way for me to give back to the cyber community for all the wonderful support I have received from everyone. They say positive things about my recipes, even when I know that the recipe could have been better. 🙂





eating food and sharing a good meal with friends and family. My recipes range I LOVE FOOD! I love cooking food, from the heart smart meals, to the fresh ingredients. Come, eat with me! indulgently delicious and prepared from

4 f : 8 2 in 9 y ¥ CONNECT WITH ME



My visitors have supported me through what I consider to be the hardest times in my life.

In return, I make delicious meals for them to try at home.

For years, I worked in the tech industry. I love the tech industry with a passion, but, I really wanted to try something different.

In the nearly 20 years that in the tech industry, there has always been one aspect that has remained a constant,

Yes, I had always used cooking as an anger management tool, creative outlet, Ego booster, Self-esteem builder and a way to deal with anxiety. Also, I love eating!

me. Nothing else mattered. Often, I found that when I was cooking, the whole world just drifted away. There was the spatula and there was

restaurant because I had a very good idea on how it takes the passion away. Given all these Everyday, I felt like I might have missed my calling as a chef.I didn't want to be a chef at a

were very lew restaurants that catered to a vegetarian diet. There were even lewer restaurants that were complexely vegetarian centric. side, it has been a very interesting and adventurous journey. Vegetarianism was not always popular and there I have been a vegetarian for over 3 decades. This is has been a challenging experience, for sure. On the other

Mexican food forever! Fortunately for me, I am Indian. Cooking has been ingrained in every Indian girl's DNA. This meant that I had to learn to cook for myself as quickly as possible. Otherwise, I would be eating Pizzas and

Curry, vegetables, etc. We never went without rice in any meal. Perfection was always emphasized and meals were prepared on a grand scale. There were always 2 varieties of

find bags of potato chips in my home. However, the fridge was always stocked with prepared dishes. Eventually, I began living on my own and found myself continuing the tradition of elaborate dishes. You will not

When I moved to NYC, everything changed...

the food options that vegetarians have in New York. cafes and food trucks!!! I had been to hole-in-the-wall restaurants and I have been to 5 star restaurants. I loved New York was not only the center of the tech industry. It was also the land of some of the linest restaurants,

between, NVC became my kitchen! I would take great prepared meals home and try to reverse engineer them. because there are so many varieties available around every corner. From Falafals to Pasta and everything in If you are a foodie, I don't have to tell you about the lure of New York City's Cooking. It is a vegetarian heaven

greatest works of art in their cooking. I was always drawn to that energy and passion. passion for the dishes they were creating. It didn't matter who the customer was, they always created the The best restaurants I went to, always had one thing in common. The chef always had an unwavering focus and

Someday, I will achieve their level of perlection!

I have an affinity and a soft spot for tomatoes. They are very versatile to cook with. They provide a delicious base to any recipe because of its rich texture and flavor.

There are as many tomato varieties and they never get boring.

If all else fails, I will have cherry tomatoes as a snack. Nothing hits the spot like a sweet, ripe and juicy cherry

LOOKING FOR A RECIPE?

Search this website ..





I am a tomato enthusiast, a tomato aficionado and a tomato connolsseur. My mission is to cowert everyone into tomato enthusiasts, aficionados and connolsseurs.

My favorite tomato is the $\underline{Campart\ Tomato}$. It is sweet and tangy without being overwhelming:

Just like me....





Variety Name Search Instructions

Enter a kind name and variety name then click "Perform Search."

If you choose to search a kind name without a variety name, click the "pass in blank variety" box which will bring up all variety names with that kind.

If you choose to search a variety name without a kind name, click the "pass in blank kind" box which will bring up all kind names with that variety.

After each search, please be sure to click "Reset Form."

** Please note that even if you do see a variety name listed, it does not mean that the name has been released in the U.S. **

Close this window